SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b)),

In re Tobacco Cases II

JCCP No. 4042

Volume 1

The People of the State of California, et al., v. Brown & Williamson Tobacco Corp., et al. (SF No. 996781),

And

People of the State of California, et al., v. Philip Morris Inc., et al. (LA No. BC 194217)

(Pages 1-275)

DEPOSITION OF:

CHRISTINE LOUISE STEELE

WEDNESDAY, MARCH 15, 2000

9:21 A.M.

REPORTED BY:

SUSAN NELSON

CSR No. 3202

Deposition of CHRISTINE LOUISE STEELE, the witness, taken on behalf of the Defendants, at 9:21 A.M., WEDNESDAY, MARCH 15, 2000, at 515 South Figueroa Street, Los Angeles, California, before SUSAN NELSON, CSR No. 3202.

APPEARANCES OF COUNSEL

FOR PLAINTIFFS:

(NOT PRESENT)

FOR DEFENDANT LORILLARD TOBACCO COMPANY:

ALLEN MATKINS LECK GAMBLE & MALLLORY LLP

BY: H. CHRISTIAN L'ORANGE, ESQ.

HENRY LERNER, ESQ.

333 Bush Street

Seventeenth Floor

San Francisco, California 94104-2806l

Telephone No. (415) 837-1515

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

APPEARANCES OF COUNSEL (CONTINUED):

FOR DEFENDANT PHILIP MORRIS:
MUNGER, TOLLES & OLSON
BY: BURTON A. GROSS, ESQ.
33 New Montgomery Tower
Nineteenth Floor
San Francisco, California 94105-9781
Telephone No. (415) 512-4024

FOR DEFENDANT LIGGETT GROUP:
POST KIRBY NOONAN & SWEAT LLP
BY: STEVEN T. COOPERSMITH, ESQ.
America Plaza
600 West Broadway
Suite 1100
San Diego, California 92101-3302
Telephone No. (619) 231-8666

APPEARANCES OF COUNSEL (CONTINUED):

FOR DEFENDANT BROWN & WILLIAMSON:
SEDGWICK, DETERT, MORAN & ARNOLD
BY: STEPHANIE A. SHERIDAN, ESQ.
One Embarcadero Center
Sixteenth Floor
San Francisco, California 94111-3765
Telephone No. (415) 781-7900

FOR THE DEPONENT (APPEARING ON BEHALF OF ASHER&PARTNERS):
O'MELVENY & MYERS LLP
BY: ROBERT C. VANDERET, ESQ.
400 South Hope Street
Los Angeles, California 90071-2899
Telephone No. (213) 430-6000

ALSO APPEARING,
TIMOTHY TERRY, PARALEGAL

I N D E X

http://legacy.library.ucsf.edu/tid/nin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

WITNESS EXAMINATION PAGE
CHRISTINE LOUISE STEELE
By Mr. L'Orange 9
(P.M. Session) 132

INFORMATION REQUESTED TO BE MARKED BY COUNSEL

PAGE LINE
35 17

E X H I B I T S

NO.	PAGE	DESCRIPTION
96	11	Defendants' Seconded Amended Notice of Taking Deposition of the Person Most Knowledgable
97	51	Final Report, Wave 1 Data
98	58	Videotape
99	71	Chronological Listing of Tobacco Control Section Advertisements
100	151	10/20/94 Letter to Colleen Stevens with Media Flowchart (A&P2799-A&P2846)
101	170	Document entitled "Document Use in California" (A&P5499-A&P558)
102	173	9/1/99 asher&partners Broadcast Traffic Instructions (A&P4843,A&P5346)
103	187	Document entitled "Tobacco Use Behavior Research"

LOS ANGELES, CALIFORNIA; WEDNESDAY, MARCH 15, 2000;
9:21 A.M.

CHRISTINE LOUISE STEELE,
having been first duly sworn, was
examined and testified as follows:

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

7

MR. L'ORANGE: Before we commence the deposition, I'd like to put two things on the record.

The first is that the First or Second Amended Notice of Defendants' Taking Deposition of the Person Most Knowledgeable at asher&partners, Christine Steele, and the company Request for Production of Documents made note that the deposition would commence at 9:00 a.m. on March 15th and would continue from day to day.

Plaintiff's counsel was placed on notice with respect to this deposition.

There was a phone call placed at approximately 9:25 this morning, advising Mr. Brookey that a constellation of luminaries had appeared and were prepared to go forward with the deposition. He was on the telephone. The message was left on his voice mail.

It is my understanding there were phone calls placed yesterday to the various parties alerting them again of the deposition's commencement this morning at

9:00 o'clock. Having waited approximately 30 minutes and with permission of everyone attending, we're going to go ahead and commence the deposition in the absence of Plaintiff's counsel.

Secondly, I've spoken with counsel for asher&partners. There are one or two issues to be resolved on the use of the documents.

We have agreed for a period commencing today and for the next 30 days that the documents will be used exclusively in this litigation only and for litigation purposes. The parties will make their best efforts to agree upon some stipulation. If that is not accomplished within 30 days, Asher's counsel has reserved his right to move for a protective order in front of our judge, and we have agreed that he may do so.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

MR. VANDERET: Just one addendum.
And in the event the parties are not able to agree within the 30-day period to a stipulated protective order and we need to make a motion, the understanding that the documents will be treated as confidential and for the purpose of this litigation only will remain in place until the court adjudicates the motion for protective order we bring.
MR. L'ORANGE: Fair enough.

EXAMINATION

BY MR. L'ORANGE:
Q. Miss Steele, my name is Chris L'Orange. I represent a defendant in an action that is currently pending before a superior court judge in San Diego.
This morning we will be taking your deposition.
Have you ever been deposed before?
A. Yes.
Q. How many times?
A. Once.
Q. How long ago was that?
A. Two or three years ago.
Q. All right. Let me review with you for a moment the bidding in terms of what's going to go on today to make sure you have no questions about the procedures.
I will ask you a series of questions. I would ask that you respond out loud and in words to my questions. If you would, please, avoid shaking your head "yes" or "no" or replying with an "uh-huh" or an "uh-hn." The court reporter sitting next to me takes down everything that you say. It's very difficult for her sometimes phonetically to pick up something when it's almost an inaudible response or a shake of the head.

You'll be given an opportunity after this proceeding to review your transcript. You may make any changes to your transcript that you so desire. I would

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

caution you, however, that any changes that you do make may be commented upon by the lawyers should this matter proceed to trial, and our judge may draw any inferences from our comments that he deems appropriate.

If we reach a point in the deposition where you would like to take a break, please stop me, and tell me and we will do so.

Also, if I ask a question -- and I can almost guarantee you this is going to happen -- and you don't understand it, please stop me and tell me. I'll rephrase the question for you. Or if we have a problem in terms of communication, we'll work it out.

I would ask you not to guess or speculate. None of us want guess or speculation on the record.

The law does entitle me to your best estimate, and, from time to time, I may ask you for a particular estimate, either in the amount of money spent or what budgetary constraints were, and I am entitled to that information, to the best of your understanding.

Now, if you feel that I am forcing you into an area where you are guessing or speculating, please tell me that, and we will try and revise the question work

within those constraints.

Finally, the testimony that you give here today is under oath, and it carries the same force and effect as if we were sitting in a court of law and you were in the witness box and you were being questioned by any of us here. Accordingly, the penalty of perjury that applies in court also applies in this proceeding even though it is relatively informal.

Any questions about what I've covered so far?

A. No.

Q. Also, could I ask you -- I know you're sitting next to the court reporter, but if you could keep your

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

voice up a little bit, that will ensure that we get a correct record.

For the record, could I have your full name, please?

A. Christine Louise Steele.

Q. And by whom are you currently employed?

A. Asher&partners.

MR. L'ORANGE: I'd like to attach to the record as Defendants' first in order -- off the -- if I could ask you to go ahead and mark this.

(The document referred to was marked by the C.S.R. as Defendants' Exhibit 96 for identification and attached to and

made a part of this deposition.)

BY MR. L'ORANGE:

Q. Okay. Miss Steele, if I may, let me show you and your counsel what has been marked as Exhibit 96.

Have you seen this document before?

A. Yes.

Q. And have you had discussions with your counsel that you have been designated as the person most knowledgeable to testify on behalf of asher&partners?

A. Yes.

Q. Do you have any questions about essentially what your obligations are as a witness when you are designated a person most knowledgeable to testify on behalf of an organization?

A. No.

Q. Did you undertake any form of investigation to prepare yourself for the deposition today?

A. No. I met with one -- our media director for about five minutes.

Q. Okay. Who is the media director that you met with?

A. Leah Mitchell.

Q. Did you meet with anyone else to prepare yourself for your testimony today?

MR. VANDERET: Other than counsel?

MR. L'ORANGE: Excluding counsel.

THE WITNESS: No.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

BY MR. L'ORANGE:
Q. Did you review any documents to prepare yourself for the deposition today?
A. No.
Q. With respect to your discussions with Leah Mitchell, can you -- can you tell me generally what those consisted of?
A. I wanted to get some background information on our research methodology for determining the reach and frequency of our media campaign.
Q. Is that a topic that customarily is something you do not deal with in terms of the duties you perform in the antismoking campaign?
A. I deal with it in a broad sense, and I -- just she deals with it in a more detailed sense.
Q. All right. Can you tell me what information was imparted to you by Miss Mitchell as a result of these discussions?
A. Yes. She told me that the name of the research company that we utilize to determine reach and frequencies for our media campaign is named Telmar out of New York.
Q. Is that T-e-l-m-a-r?

A. Yes. And she explained the process by way reach and frequencies are determined via them.
Q. All right. Now, that's something we'll discuss later in the deposition, so I'll defer that for now.
Was there any other discussion or any other topic discussed outside of what you've described for us so far?
A. No.
Q. Would you briefly outline for me your educational background.
A. I graduated from Occidental College in 1984, and I graduated from Northwestern University with a master's in 1985.
Q. Okay. And the master's was in journalism?
A. Journalism.
Q. Did you commence work in 1985?
A. In 1985, yes.
Q. All right. Could you briefly outline for me

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

what your employment history has been from 1985 to the present?
A. From 1985 to 1990, I was employed by DDB Needham Los Angeles.
Q. I'm sorry. That's D-D --
A. DDB Needham, N-e-e-d-h-a-m.
From 1990 to 1991, I was employed by

14

Dailey & Associates.
From 1991 to '92, I took a break.
From 1992 to -- until 1994, I was employed by Livingston Keye.
And from 1994 until the present date, I have been employed by asher&partners, formerly known as Asher/Gould.
Q. Can you briefly outline for me the nature of your duties when you were employed at DDB Needham.
A. I was in account management there. Began as an assistant account executive, and I exited as an account supervisor. I supervised the advertising for accounts, including Bugle Boy Jeans, Teledyne Water Pik, CIGNA Healthplans, a variety of other accounts.
Q. Okay. After you left DDB Needham and joined Daly, what were the job duties that you had while you were at Daly?
A. I was an account supper on the Gallo Wine advertising account.
Q. From 1992 to 1994, what were your job duties at Livingston Keye?
A. I was a vice president account director of the state of California antismoking media campaign.
Q. Was that an account that Livingston already had when you joined the agency?

15

A. Yes.
Q. Was it an account they had in 1992 when you first employed there?
A. Yes.
Q. When you made the transition from Livingston to Asher, were there any other Livingston employees who worked in the antismoking campaign that transitioned

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

with you?
A. With me?
Q. Yes.
A. No.
Q. Were there others that showed up later?
A. Yes.
Q. Who came over to Asher from Livingston after you departed?
A. Tina Davis. And Judy Blachley.
Q. Could you spell that last name?
A. B-l-a-c-h-l-e-y.
Q. Okay.
A. Alberta Lum.
Q. L-u-m?
A. Yeah.
Q. Anybody else?
A. No.
Q. Who supervised the account for the antismoking

16

campaign at Livingston when you were there from 1992 to 1994?
A. I did.
Q. From the time you were hired, you supervised the account?
A. Yes.
Q. Are the people that you just named for us -- Tina Davis, Judy Blachley, and Alberta Lum -- were they part of a team at Livingston that put together the campaign for antismoking?
A. No.
Q. Did you have a team in place at Livingston for the antismoking campaign?
A. Yes.
Q. Who comprised the team?
A. Myself. Tina Davis. A woman named Amy, whose last name I don't recall. That was the account management team.
Q. What about the creative mechanism that was in place at Livingston for the antismoking campaign? Who comprised that team?
A. Cabell Harris was the creative director.
Q. Anyone else?
A. He had a variety of people that worked for him, developing advertising.

17

Q. Are these independent contractors --
A. No. They were employed by Livingston

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Keye. I don't recall all of their names.
Q. To your knowledge, did any of the employees who worked on the creative side of the campaign for Cabell Harris transition over to Asher Partners?
A. No.
Q. Did Mr. Harris at any time transition over?
A. No.
Q. What was the nature of your duties as the account supervisor for the antismoking campaign from 1992 to 1994?
A. I was in charge of the overall management of the account. I was the key client liaison. I was in charge of developing strategies.
Q. Let's take those one at a time if we could.
What were your responsibilities as the overall manager of the account? Essentially, the buck stopped with you?
A. Yes.
MR. VANDERET: Object to the question as vague ambiguous and unintelligible.
BY MR. L'ORANGE:
Q. You made the management decisions from the Livingston side of the house?

A. Together with Paul Keye and Roger Livingston, the owners of the company.
Q. Could you give us some idea of the types of decisions that were made in conjunction with Messrs. Keye and Livingston?
What I'm really driving at is, did the three of you essentially put together the creative focus, if you will, of the antismoking campaign?
A. Yes.
Q. All right. And that was with some input from Mr. Harris; correct?
A. Yes.
Q. All right.
A. And the client.
Q. Okay. Now, did you work on a budget with the State, or did you come up with a budget, then submit it to the State for approval?
A. We worked on the budget with the

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

State.
Q. And the budget was?
A. A budget given by the State.
Q. All right. Was the budget a collaborative effort? And by that, I mean, the State came to you and said, "We would like to accomplish the following over this budgetary period. Here's the money we want you to spend"? Or did the process work where the State came to

19

you and told you what they wanted to have accomplished, you then created a budget, and submitted it to the State?
A. The first.
Q. Okay. Did you -- who was your client contact for the State in the '92 to '94 time frame?
A. Colleen Stephens.
Q. Anyone else?
A. There was a variety of people that worked there.
Q. Carol Russell?
A. Jackie Duerr. Valerie Quinn. Dileep Ball.
Q. I'm sorry. Billy --
A. Dileep Ball.
Q. Okay. Anyone else?
A. Not that I recall.
Q. Now, these are people you had personal contact within the course of making decisions in the antismoking campaign during the '92 to '94 time frame?
A. Yes.
Q. Would it be fair to say that your principal contact was Colleen Stevens?
A. Yes.
Q. Was there anyone else that you would consider to be a key assistant on the Livingston team that also

20

interfaced with the State in the '92 to '94 time frame?
A. "Assistant" meaning?
Q. Did you have an assistant who would go with you to the meetings and interface with the State?
A. Reporting to me or kind of an associate? That's what I don't understand.
Q. Either one. I'm sorry.
Either one. An associate from

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Livingston that would go with you when you did your reports and would also have input or an assistant, someone who perhaps worked for you that went with you and also had a role in presenting data and information to the State.

A. Paul Keye. Roger Livingston.

Q. All right. Now, are these gentlemen still in L.A. today?

A. I don't know.

Q. What was the fate of the Livingston agency? Is it still in existence?

A. No. I don't know what happened to it exactly.

Q. Do you know approximately when it ceased operating as a company? We've --

A. No.

Q. We've seen Livingston and Keye, then -- we've seen in Livingston & Company. It's clear there were some changes but --

A. Right.

Q. Was it still in existence when you left it in 1994?

A. As Livingston & Company, yes.

Q. Now, did the -- for want of a better term, I'm going to call it the Prop 99 program.

Is that okay with you?

A. Sure.

Q. You understand what I'm talking about?

A. Hm-hm.

Q. All right. Did the Prop 99 program transition with you from Livingston to Asher?

A. No.

Q. All right. Can you tell me how that program devolved, if you will, from the Livingston company over to Asher?

A. The State put out a request for proposal and Asher & Partner- -- Asher/Gould bid on it along with a variety of other agencies, and we won the bid.

Q. All right. Now, that proposal was actually bid and won in roughly 1996?

A. May of 1994.

Q. Oh, all right. So I'm sorry. So Asher bid in May of '94.

Did you transition to Asher as a

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

result of

22

Asher acquiring the program?
A. No.
Q. Independent decision to leave?
A. Right.
Q. All right. You then, I assume, applied to Asher/Gould to work there?
A. They recruited me to work there on an account.
Q. In other words, Asher/Gould came, recruited you out of Livingston to work on the Prop 99 program?
A. No.
Q. Different account?
A. Yes.
Q. What account was it?
A. Cherokee Jeans.
Q. From the -- from 1992 to 1994 when you were supervising the Prop 99 program, were there specific ad campaigns that you were either involved in or responsible for that were put out over the media?
A. Yes.
Q. And do you have a recollection as to what specific ad campaigns in the Prop 99 program those were?
A. I believe there was an excess of 30 or 40 commercials produced, so I don't recall all of their individual names.
Q. To your knowledge, did all of the file

23

materials, videotapes of commercials, everything that was done by Livingston in the course of the two years they did -- operated the Prop 99 program, did all of those materials transition over to Asher?
A. I have no idea.
Q. At any time after you arrived at Asher and were asked to participate in the Prop 99 program, did you do any form of inventory to see what materials had been sent over by Livingston, if any?
A. No.
Q. Do you have any independent understanding as to the fate of file materials, videotape, anything like that, that was maintained by Livingston?
A. I know that some of the materials came

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

over to
asher&partners.
Q. Do you have any independent understanding as to either the volume of materials or the types of materials that came over?
A. No.
Q. During the course of your employment at Livingston, was the Prop 99 account the one account that you worked on, or were there others?
A. That was the primary account.
Q. And by "primary," are we saying it occupied between 90 and 95 percent of your time?

24

A. Yes.
Q. When you were at Livingston, were you involved in the production of TV antismoking ads?
A. Yes.
Q. Radio antismoking ads?
A. Yes.
Q. Were there other forms of media that Livingston utilized in the antismoking message?
A. Yes.
Q. What were they?
A. Outdoor bulletins.
Q. And outdoor bulletins, is that a bulletin board?
A. Yes.
Q. Okay.
A. Newspaper ads. That's all.
Q. Did Livingston -- strike that.
Did you involve -- find yourself involved in the drafting of press releases that would be issued by State officials during the time you were at Livingston?
A. No.
Q. Did anyone else at Livingston?
A. No.
Q. I've never worked in an ad agency so some of these are going to be fairly clumsy questions, but is

25

one of the goals when you're promoting a particular campaign, and in this case, say, a Proposition 99 antismoking campaign -- do you tie your television ads with radio ads and with the outdoor bulletins and newspaper ads all at the same time,

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

essentially, to
flood the market? Or do you do a targeted program where
you use various forms of media to do that?
MR. VANDERET: Object to the question as
compound and vague and ambiguous.
BY MR. L'ORANGE:
Q. Do you understand what I'm driving at?
A. No.
Q. Can you tell me how the media campaign was
essentially formulated at Livingston, utilizing
television, radio, the outdoor bulletin boards, and the
newspaper ads?
A. It's -- it's still such a broad question. I
don't understand.
Q. All right. When you -- one of the forms of
communication that Livingston would use would be
commercials on television; true?
A. Yes.
Q. All right. Would you then coordinate that
campaign with a similar ad campaign on radio?
A. Sometimes yes. Sometimes no.

Q. What would be the -- the rationale for
coordinating both of them together as opposed to doing
them separate and apart?
A. There would be a variety of factors. Budget.
What stage a campaign was in. Who we were trying to
reach. A multitude of factors.
Q. Those same factors would apply in considering
your use of bulletin boards and newspaper advertisements
as well?
A. Yes.
Q. All right. When you were designing your media
campaigns at Livingston, did you make an attempt to, if
you will, relate those campaigns to particular events?
For instance, the Rose Bowl occurring in Los Angeles and
knowing people would be watching television, would you
attempt to get more ads on television hoping to reach a
wider audience?
A. Tied to certain events, no.
Q. Okay.
(Whereupon Mr. Coopersmith
entered the deposition room.)

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

MR. COOPERSMITH: Pardon. I'm Steve Coopersmith from Post, Kirby.
MR. L'ORANGE: Okay. Let's go off the record a minute.

27

(Discussion held off the record.)
MR. L'ORANGE: All right. Back on the record.
Q. While you were at Livingston and dealing with Colleen Stevens, did the State have the final approval as to whether a particular campaign aired?
A. Yes.
Q. Were there any campaigns that were proposed but rejected by the State in the 1992 to 1994 time frame?
A. Yes.
Q. Can you tell me what campaigns those were?
A. No.
Q. Can you tell me why they were rejected?
A. No.
Q. Was it ever explained to you why they were rejected?
A. At the time. Probably.
Q. Were the campaigns at the stage that they were rejected conceptual in nature or had pilot ads been produced?
A. Could you rephrase that.
Q. Were the campaigns that were rejected by the State at the time of their rejection conceptual in nature? In other words, you went up and discussed them with the State or how -- produced a pilot ad that the State reviewed?

28

A. Conceptual in nature.
Can you clarify also what you mean by "campaigns"?
Q. Truthfully, I'm not sure I can. I assumed that there is a difference between ads and a campaign, and I would use "campaign" in a sense that it's a series of ads designed to achieve something.
Is that a fair use of the term?
A. We generally do ads, not campaigns.
Q. Okay. Just so I'm on the same footing with you, then, for instance, if you were to do a

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

series of
ETS commercials, that would be referred to as an ad and
not a campaign. Is that --
A. Each element would be referred to as an ad and
because the ads would not be similar to one another,
they would just simply be ads. They would never be
classified as a campaign.
Q. Does the -- and, again, so I'm on the same
wavelength with you, does the term "campaign" have a
particular meaning in your industry?
A. Yes.
Q. What is that?
A. It generally means all of the elements of an
advertising campaign have a similar theme, look, tag
line. Like Nike has "Just do it."

29

Q. Okay. And, again, so that you and I are
operating on the same wavelength, would it be your
position that the Prop 99 antismoking program consists
of ads but not a campaign?
MR. VANDERET: At any time? Are you speaking
the whole time?
MR. L'ORANGE: Well, yeah, let me start that
broad, then work in.
THE WITNESS: I would say in most cases with
maybe some exceptions. In most cases, they were a
variety of individual ads produced.
BY MR. L'ORANGE:
Q. Okay. To the extent that you believe that a
campaign was conducted under the aegis of Prop 99, could
you tell me what that campaign was? We can separate
that out from the questioning and treat it separately.
A. There was a campaign developed called "The
Risks of Smoking" using a character named Clifford.
Q. This is the gentleman in the gas mask?
A. Yes. I believe there were 21 commercials, all
with that same look and use of that individual.
Q. Okay.
A. So that I would classify as a campaign that the

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

State did.
Q. Okay. Anything else?

30

Just by way of refreshing your recollection, we are generally aware -- and I'm going to ask you to listen to them a little bit later in the deposition -- of a somebody, The Schnozz?
A. Right.
Q. He can distinguish various odors and tell you what they are.
Would that be an example of a campaign -- I'm only aware of two radio commercials. But would that be a --
A. Yeah. In some cases, there was a couple of radio spots that were similar in nature. There was several outdoor boards that were similar in nature. So when anything is developed that's similar in nature, one element to the other, I would say that was a campaign.
Q. Okay.
A. But for the most part, we're talking about ads.
Q. All right. Would the commercials that surrounded AB13 be another example of a campaign? Would that be a fair use of the word in that context?
A. I would need you to really tell me the names of those commercials and describe them to me.
Q. What I'm thinking of specifically are the ones that aired with respect to waitresses and the bartenders.

31

A. I wouldn't call those a campaign, no.
Q. And how would you distinguish between that series of ads and what you would term a campaign?
A. That series of -- those two ads are different, one from the other. They don't use similar talent. I don't believe they use similar music or visual look or ending theme line.
Q. Okay. So all right. I understand.
So a campaign goes beyond the message. A campaign would have similar theme, similar --
A. Right.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. -- music, similar tag lines, similar scenery?
A. In my definition, yes.
Q. All right. Fair enough.
Let's go off the record for a minute.
(Discussion held off the record.)
BY MR. L'ORANGE:
Q. Were Messrs. Livingston and Keye the two people you dealt with principally at the Livingston agency with respect to the Prop 99 program?
A. No.
Q. Who was the person you dealt with?
A. It was really everyone who was employed there that worked on the business. So a variety of people. It's a team business.

32

Q. What was your role in terms of the creation of ads?
A. I don't create ads.
Q. That would have fall -- fallen under Mr. Harris's responsibility?
A. Yes.
Q. All right. Does he then bring a concept to you for approval?
Let me rephrase the question.
Tell me how the process worked at Livingston that led to the creation of an ad.
A. I, together with my clients and Paul Keye and Roger Livingston and other members of my account management team and members of the account planning team, would develop strategies that we believed would be effective in accomplishing our goals. We would give those strategies to the creative department, and then they would develop advertising based on those strategies.
Q. All right. Let me follow up.
The account management team would be you and some of the others that you named this morning; correct?
A. Yes.
Q. All right. The "account planning team" is not a term we've used before.

33

Who would comprise that team?
A. At Livingston?
Q. Please.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

A. A woman named Barbara and a gentleman named Mark Rosenberg.
Q. And as the account planning team, what's your understanding of their duties?
A. Their duties are to represent the voice of the consumer, and they assist the account management team in developing strategies.
Q. And how exactly would that work? In other words, do they look at the strategy in terms of their perceptions of how a consumer would look at it?
A. We would write strategies together, and their role would be to say here's what I think the consumer would -- here's how I believe the consumer would react to this approach based on their knowledge of the consumer.
Q. Do you know how they acquired that knowledge? Was there a particular research organization that they would go to? Did they use focus groups? Did they have something along the lines of a Gallup organization assisting them?
A. They used secondary research materials, and they were in involved with focus groups.

34

Q. And secondary research materials would be?
A. Meaning published materials that you could research or get based on a certain subject.
Q. And I'm sorry I'm not tracking with you, but, in other words, they would go to published literature?
A. Right.
Q. But what would be the types of literature they would access?
A. It would depend on the subject of the strategy what they would access.
MR. L'ORANGE: Do you want to take a break for a moment?
THE WITNESS: I'm fine.
MR. L'ORANGE: Let's go off the record for a minute.
(Discussion held off the record.)

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

MR. L'ORANGE: If you could mark this part of the transcript for me, too, please.
The record should reflect that at approximately 10:05 and 35 minutes into the deposition, we made another call to Plaintiffs' counsel at Preston, Gates & Ellis, advised him that we were assembled and questioning the witness. Tim Terry from Allen, Matkins spoke with Brian Brookey of Preston, Gates personally. Mr. Brookey advised that he had every confidence in --

35

MR. VANDERET: Full confidence.
MR. L'ORANGE: -- full confidence, full confidence in Asher's counsel and, accordingly, would not be attending the proceeding -- off the record a minute --
(Discussion held off the record.)
MR. L'ORANGE: Let the record reflect that approximately 10:15 a telephone call is going to be made to the offices of the Lexington Law Group in San Francisco, advising them that Mr. Brookey has elected not to attend. And the fog is lifting, so they may want to consider United Airlines if they choose to come down and attend the deposition. Or if Mr. Todzo so desires, we can hook him in by telephone.
Q. Okay. Back on the materials that you're referencing.
Would these be consumer analyses or consumer studies that may have been published regarding perceptions of the consumers or how they interpret information? I'm trying to get a feel for the type of written material these folks would look at.
A. Well, anything published on the subject at hand. So it could be anything.
Q. Hypothetically, if you were creating an ad at Livingston and that ad was going to deal with, let's

36

say, smoking in an enclosed space, can you give me some

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

idea, based on your understanding, of the types of materials these people might look at in order to represent the voice of the consumer in consideration with respect to the creation of that ad?

MR. VANDERET: Objection. Calls for speculation.

BY MR. L'ORANGE:

Q. If you know.

A. I can't.

Q. You indicated that the client, which would be the State; correct?

A. Yes.

Q. Would this be Colleen Stevens particularly, or were there other persons who were involved in discussing ad strategies?

A. I believe I mentioned those other individuals.

Q. Okay. So it would be the people you identified in conjunction with Miss Stevens?

A. Yes.

Q. All right. Jackie Duerr?

A. Yes.

Q. All right. What was the State's role in these discussions?

MR. VANDERET: What discussions?

THE WITNESS: Which discussions?

BY MR. L'ORANGE:

Q. The discussions that you had that you described for us that took place with respect to the strategies that would lead to ads.

MR. VANDERET: We're speaking now of the Livingston Keye period?

MR. L'ORANGE: Right, right.

MR. VANDERET: Okay.

THE WITNESS: They would review the strategies and -- and let us know whether or not they agreed with the strategic recommendations.

BY MR. L'ORANGE:

Q. Would you personally characterize the role as passive in the sense that strategies are presented to them and they say "yes" or "no," or did they take an active role in the standpoint of saying we want more emphasis on a particular point or more frequency in the

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

ads? Exactly what was the --
A. I am sure that it varied case by case.
Q. So in some ads, they would take a more active role; in others, it would be more passive.
Is that a fair characterization?
A. That's my recollection.
Q. During the time that you were with either

38

DDB Needham, Dailey & Associates, or Livingston and Keye, did you ever serve as an account manager where you were managing, essentially, a health-based series of ads as you were at Livingston and Keye when you managed the Prop 99 program?
A. Could you define "health-based"?
Q. Where the campaign is concerned with not necessarily the sale of a consumer item, but rather emphasizes health effects that may be caused by exposure to it?
A. No. You said while not at Livingston? Or including Livingston?
Q. I'm excluding the Prop 99 program.
A. Excluding.
Q. At Livingston.
A. Oh, excuse me. Yes.
Q. Okay. Could you describe for us what series of ads or campaign you're referring to?
A. Oh, when I worked on the Teledyne Water Pik, we developed ads for the Water Pik which talked about the health benefits of using the Water Pik.
Q. Accentuating the health of the gums --
A. Yes.
Q. -- as opposed to brushing?
Okay. Is that the only one that you can think

39

of?
A. Yes.
Q. Approximately when did you join what was then Asher/Gould?
A. In January of 1994.
Q. Okay. Did you participate in any way in the preparation of the response to the State's RFP for the Prop 99 program that was submitted by Asher/Gould?
A. Yes.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. What was your role in that?
A. I wrote the strategic narrative for the proposal. I worked together with the president, assembling the entire proposal. And I participated in the oral presentation.
Q. Again, more out of ignorance, what was the strategic narrative that you wrote?
A. The State, in their request for proposals, says here are our objectives that we want to accomplish. How do you recommend we accomplish those objectives?
And the narrative is the part of the proposal where you discuss your recommendations.
Q. At the time that this RFP was submitted, Livingston still had the account?
A. I don't recall the time that their contract ended and when ours began, if there was an overlap or if

they didn't have it and no one had it. I don't recall the contract details.
Q. You were awarded -- Asher was awarded the campaign -- or I'm sorry -- the ad for Prop 99 in May of 1994?
A. Yes.
Q. Did you consult with anyone at --
Again, let the record reflect Mr. Terry is confirming that he made a phone call to San Francisco to Mr. Todzo.
And Mr. Todso's response was?
MR. TERRY: He is not interested in attending and doesn't want to be conferenced in via telephone.
MR. L'ORANGE: Miss Steele, I apologize to you. I'm finding this endlessly fascinating. I don't know why our opposition isn't here, but all right.
I'm sorry. Can I have the last question.
(Record read as follows:
"QUESTION: Well, you were awarded -- Asher was awarded the campaign -- or I'm sorry -- the ad for Prop 99 in May of 1994?
"ANSWER: Yes.
"QUESTION: Did you consult

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

with
anyone at -- again, let the record

41

reflect --")
BY MR. L'ORANGE:
Q. Did you consult with anyone else at Asher in the preparation of the strategic narrative?
A. Yes.
Q. Who else was that?
A. I don't -- I don't recall everyone that I consulted with. I can recall some of the people.
Q. If you would, please.
Would you like a Kleenex?
A. No, I'm good. Bruce Silverman.
Q. And Mr. Silverman's position with Asher is?
A. President.
Q. Okay. Who else?
A. Leah Mitchell.
Q. And her position was?
A. Media director.
Mark McDonald.
Q. And his position?
A. Creative director.
Those are the primary people that I recall.
Q. Okay. Can you, in general, advise me as to what role Mr. Silverman played in assisting you in creating the strategic narrative?
A. He reviewed what I wrote.

42

Q. And Miss Mitchell?
A. She reviewed what I wrote and developed the media proposal.
Q. And that was part of the submission to the State's RFP?
A. Yes.
Q. And Martin [sic] McDonald?
A. He was operative director. He developed the ads for the proposal.
Q. And all that information was submitted to the State in response to the RFP?
A. Yes.
Q. In drafting the strategic narrative, did you draw upon the experience that you had garnered for the two years you had been at Livingston, supervising the Prop 99 program?
MR. VANDERET: Object to the question. Vague

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

and ambiguous.
THE WITNESS: So it's hard to determine, you know, what things from your past experiences in life affect your present doings.
BY MR. L'ORANGE:
Q. Okay. Asher then was notified roughly in May of 1994 it had been awarded the contract; correct?
A. Yes. I'm not exactly sure of the date of

43

notification. Around that time.
Q. Do you have a recollection as to approximately what date it was that Asher was permitted to now go forward and begin preparing ads or working on the creative concepts that would become Prop 99 ads?
A. I know our contract with the State started in May of '94. I don't know what date we began developing ads.
Q. Did you immediately take charge of the account in May of '94 once the State indicated it had approved you as the contractor?
A. Together with a team of people, yes.
Q. All right. Can you tell me who comprised your team?
A. At Asher?
Q. Please.
A. The key members of the team are the people I mentioned. In terms of those who helped me prepare the proposal?
Q. All right.
A. Those are the primary people.
Q. That would be Bruce Silverman, Leah Mitchell, and Mark McDonald?
A. Yes.
Q. Anybody else?

44

A. Those are the primary individuals.
Q. With respect to the creation of the ads, can you briefly tell us what the responsibilities were of Mr. Silverman, Miss Mitchell, and Mr. McDonald?
A. Similar to Cabell Harris. Mark McDonald would develop the creative concepts after I developed

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

the
strategies.
Q. And what would Miss Mitchell do?
A. She developed media plans.
Q. And Mr. Silverman?
A. He was the president of our company, so he had
an oversight role.
Q. Has this team remained pretty much intact
together since 1994, or have there been replacement
members of this team?
A. Replacement members.
Q. Okay. Who has stepped in?
A. Our creative director is Bruce Dundore.
Q. And when did Mr. Dundore take over that
position?
A. I don't know.
Q. Can you give me an approximation?
A. Uh-hn. No, I can't.
Q. A span of years? '95, '97?
A. Within the last five years.

45
Q. Okay. Any other replacements on the team?
A. Bruce Silverman is no longer the president.
Q. When is -- who replaced him?
A. Our president is Joel Hawkberg. But he does
not play a role on the account.
Q. Does Mr. Silverman still play a role at all?
A. No. He works at Western International Media,
and we buy our media through them.
Q. I see. Approximately when did he step down as
president?
A. Within the last three to four years.
Q. And Miss --
A. Within the last three years.
Q. Sorry. Miss Mitchell is still there?
A. She is still there.
Q. Would it be fair to say, then, that the current
team would be -- is it Bruce Dundore? Is that how it's
pronounced?
A. Yes.
Q. Bruce Dundore is the creative director.
Miss Mitchell as the media director and yourself as in
charge of strategy?
A. The current team, the creative -- the key
creative person was John Krueger, the last couple of

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

years, year-and-a-half. And he's no longer with the

46

company. So we are currently determining who that key creative person will be.

Q. All right. But as you sit here today, strategy is still what you do, and media direction is still what Leah Mitchell does?

A. Yes.

MR. L'ORANGE: Can we take about a ten-minute break here?

MR. VANDERET: Sure.

MR. L'ORANGE: Fair enough?

(Recess taken.)

BY MR. L'ORANGE:

Q. Were you involved in the latest contract submission by Asher in response to the State's RFP in 1999?

A. Yes.

Q. And what was your role in that?

A. It was a slightly reduced role because I was on maternity leave. So I reviewed the proposal that had been written by some of my teammates and made changes to it.

Q. And --

A. Primarily strategic changes.

Q. Can you tell me the strategic changes that you made?

47

A. No. I would really need to see the document and remember. That far back, I was incredibly sleep deprived.

Q. Who were your teammates that were principally tasked with writing the response in 1999?

A. Allison Melody.

Q. Allison Melody?

A. Melody.

Chris Wauton. Barry Schoenfeld. John Krueger. Leah Mitchell. Trevor Roth. Lananh Thantrong. There's one for you.

But in the end, I wrote the primary response. So they took a stab at it, and then I did it.

Q. All right. Once the -- do you have a recollection of working on the Prop 99 program at Asher

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

between the time you joined the agency in January of 1994 until the contract was awarded in May of 1994?

MR. VANDERET: Object to the question as vague and ambiguous. I don't understand what you're asking.

THE WITNESS: I don't either.

BY MR. L'ORANGE:

Q. Did you work on any Prop-99-related activity in that five-month period between the time you joined the agency and the time the contract was awarded to Asher?

A. I was working on the Cherokee Jeans account.

48

Q. Okay. And once the account was awarded to the agency, you then stepped in as the person in charge of it?

A. Together with my team, yes.

Q. All right. Did you meet with the State after the contract was awarded to determine what their objectives were for the contract period?

A. I believe so.

Q. Can you tell me what the State articulated as its objectives at that meeting?

A. No.

Q. Had there been a shift in the priorities of the Prop 99 program sometime in 1993 such that ETS was going to -- environmental tobacco smoke was going to be a subject that received priority in the ads that were promulgated by Prop 99 funds?

A. No. The strategic priorities for the State have been the same since the inception of the campaign.

Q. All right. And what are those strategic priorities?

A. Overall objective of the campaign is to reduce the prevalence of smoking in the state of California.

Q. Anything else?

A. You can ask me specific questions.

Q. To your knowledge, in or about 1993, was there

49

any State decision that the Prop 99 program

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

would
emphasize a reduction in exposure to ETS, a reduction in
youth access to tobacco, and specific ads to counter
pro-tobacco activities or pro-tobacco influence in the
community?
MR. VANDERET: Object to the question as
compound.
THE WITNESS: So would you break it out, the
question?
BY MR. L'ORANGE:
Q. Did you become aware anytime in 1993 that the
State was going to prioritize the three topics that I
outlined for you in the previous question?
A. As I mentioned before, the State's priorities
have been the same three to four priorities since the
inception of the campaign to date.
Q. I'm --
Can I have that read back.
(Record read as follows:
"ANSWER: As I mentioned before,
the State's priorities have been the
same three to four priorities since the
inception of the campaign to date.")
BY MR. L'ORANGE:
Q. Now, in your earlier answer, you indicated to

me the State priority was to reduce the prevalence of
smoking in California.
A. Right.
Q. And in this response you indicated there were
three or four priorities?
A. I was referring to those elements that you
mentioned.
Q. All right.
A. Which are subsets of the overall objective.
Q. All right. I understand.
Were there discussions between you and the
State with respect to how environmental tobacco smoke
would be emphasized in ads as a priority of the State?
A. It's kind of a vague -- vague question.
Q. Are you familiar with a document entitled "The

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

Independent Evaluation of the California Tobacco Control Prevention and Education Program," commonly known as the Wave 1 report?

A. May I see it?

MR. L'ORANGE: Sure.

Could you mark this.

(The document referred to was marked by the C.S.R. as Defendants' Exhibit 97 for identification and attached to and made a part of this deposition.)

MR. VANDERET: Is this the document produced by Asher?

MR. L'ORANGE: Yeah.

The record should also reflect, with respect to Asher, we have entered into the stipulation that I described earlier on the record, which is that we have a 30-day period in which the documents are going to be treated as confidential and may be utilized for purposes of this litigation only, We're going to try and reach an appropriate stipulation with Asher's counsel with respect to the fate of the documents outside of this litigation. If we're unable to do that, he has reserved his right to move for a protective order before Judge Prager.

If any Asher documents are passed out today, consistent with our stipulation, if you would treat them as confidential and utilize them only for purposes of this litigation pending our reaching some agreement by way of stipulation.

MR. VANDERET: The only addendum to that, as I semi-indicated earlier, that in the event we're unable to reach a stipulated protective order in the next 30 days and it's necessary to bring a motion for a protective order, the parties agree that the documents will continue to be treated as confidential and for use

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

only in the litigation pending adjudication of Asher's motion for protective order. If -- I need the assent of all counsel present who are going to receive Asher documents or else we cannot pass out Asher documents.

MS. SHERIDAN: Stephanie Sheridan. That's fine from my perspective. I just want to clarify something though.

To the extent that Asher documents are marked as exhibits, will the court reporter be putting them in a separate exhibit folder that will be marked "confidential," or how are we going to handle that for purposes of designation of record?

MR. VANDERET: We're going to have to put them -- separate them out separately, or people who receive the transcripts will have to receive the transcripts under the understanding we've just agreed to.

MS. SHERIDAN: What's your position as to the testimony on the record if there's testimony about the documents?

MR. VANDERET: Same thing, for the present time.

MR. COOPERSMITH: Steve Coopersmith for Liggett. I agree.

MR. VANDERET: Okay. Is there anybody else?

MR. GROSS: Yeah. Burt Gross for Philip Morris. We have no problem with that.

MR. VANDERET: Okay.

MR. L'ORANGE: Okay.

Q. Miss Steele, if I could ask you to look at Exhibit 97. And if you would turn to the executive summary at page iii, you'll find it -- it's a document that's been copied on both sides of the page, so you'll find it on the backside of the page.

A. Tell me -- tell me again?

Q. It's page iii.

MR. GROSS: It's page -- it's about five pages into the document. Page iii.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

THE WITNESS: Is this it?
BY MR. L'ORANGE:
Q. All right. Let me draw your attention to the middle of the page.
The paragraph on page iii reads as follows:
"Over time," comma, "increasing emphasis has been placed on a broader," comma, "environmental focus for community programs in the statewide media campaign," period. "Since late 1993," comma, "tobacco control efforts funded by the CDHS/TCS have concentrated

54

on three priority areas," colon, "1, reducing exposure to environmental tobacco smoke," paren, "ETS," close paren, semicolon, "2, reducing youth access to tobacco through commercial and social sources," semicolon, "and 3, countering pro-tobacco influences in the community," period, close quote.
Are these the priorities that were communicated to you by State officials in or around 1993?
A. These are the priorities that are consistently communicated to us by the State.
Q. All right. Did you have discussions with State representatives about either programs or ads which would concentrate on the subject of environmental tobacco smoke?
We'll refer to it as ETS from here on out in the deposition.
MR. VANDERET: Anytime?
MR. L'ORANGE: Yeah.
THE WITNESS: Yes.
BY MR. L'ORANGE:
Q. All right. When did those discussions first take place?
A. Since that has been a strategic priority all

55

along when I started working on the campaign in 1992 to present, we discussed that topic.
Q. All right. Is it a fair statement to say that when you commenced your work on the program in 1992, ETS

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

was already a priority for the State of California?
A. Yes.
Q. All right. Were there, at the time that you were at Livingston between 1992 and 1994, specific ads developed to address the theme of ETS either in the home or in the car?
A. There were ads developed to address ETS. I would want to review the ads to see in what context.
Q. Okay. Do you have any -- as you sit here today, do you have any specific recollection of an ad that addressed ETS at home or in the car?
A. Ever? You mean throughout time or --
Q. In the '92 to '94 time frame.
A. In the home or in the car. '92 to '94.
I believe that those ads that dealt with ETS in the home were developed prior to 1992.
Q. Okay. Do you know what agency developed them prior to '92?
A. Yes.
Q. What agency was that?
A. Keye Donna Pearlstein.

Q. Was that a predecessor to Livingston and Keye?
A. Yes.
MR. L'ORANGE: Okay. Let's go off the record for a minute.
(Discussion held off the record.)
BY MR. L'ORANGE:
Q. Miss Steele, what I'm going to do is hand over to you a videotape which was produced in response to a subpena request for documents that was served on asher&partners. Inside the film case is a typed listing of the ads that are contained on the videotape.
What I'd like to do is ask you to take a moment and look at the enclosed listing to see if that refreshes your recollection about what ETS ads have been produced in the Proposition 99 campaign.
A. Okay.
Q. All right. Does it refresh your recollection in any way about the ETS ads that were produced?
A. Yes.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://industrydocuments.ucsf.edu/docs/phhd0001

Q. All right. Can you tell me which ones you are familiar with based on your review of the insert in the film case?
MR. VANDERET: I'd like to insert an objection, lack of foundation, as these were produced prior to the time Miss Steele was at the agency.

57

But subject to that --
MR. L'ORANGE: No, that's fair.
Q. Let me represent to you, this is not a memory test. These ads span a time period of 1990 to roughly 1999 --
A. Right.
Q. -- in agencies that frankly precede Livingston.
Let's go off the record for a minute.
(Discussion held off the record.)
MR. L'ORANGE: Miss Steele, I've handed you what's been marked as Exhibit 98. Let me represent to you that it is a VHS tape that was produced by Asher in response to a document subpena that accompanied your deposition or the person most knowledgeable deposition notice.
(The document referred to was marked by the C.S.R. as Defendants' Exhibit 98 for identification and attached to and made a part of this deposition.)
BY MR. L'ORANGE:
Q. Were you involved in any way in the production of this tape?
A. I was involved in the -- giving the direction to people that worked for me to put a tape together of all the ETS commercials produced from the start of the

58

campaign.
Q. All right.
A. I didn't review the list.
Q. All right. The commercials that are set out on Exhibit 98 are all of the ETS commercials produced in the Proposition 99 campaign currently in the custody of Asher.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

Would that be a fair statement?
A. Some of the ethnic commercials that have to do with secondhand smoke are not on here.
Q. All right. Let me rephrase the question.
With respect to the commercials that are on this videotape --
A. Hm-hm.
Q. -- these are commercials that are currently in the custody of Asher; correct?
A. They're in the custody of the State, and we store them on behalf of the State.
Q. All right. Can you tell me how this tape was prepared or what your understanding is of how this tape was prepared?
A. I said to the account management personnel that worked with me, "Please prepare a half-inch videotape of all of the commercials that have to do with secondhand smoke that have been produced since the beginning of the

campaign."
Q. And the person you gave this instruction to was whom?
A. It was three different people. I don't know who actually did it.
Q. All right. Can you tell me who those three people were?
A. Lananh Thantrong, Cailin Cannon, and Valerie Wernick.
Q. And it's your understanding that either one or all three of these persons played some role in the creation of the tape that's been marked and placed in front of you as Exhibit 98?
A. Yes.
Q. Have you reviewed this tape in its totality at any time prior to coming to the deposition today?
A. No.
Q. Were you involved in the actual creation of some of the ETS ads that are set forth on this tape?
A. Yes.
Q. Who --

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://industrydocuments.ucsf.edu/docs/phhd0001

A. Creation? No.
Q. All right. Supervision --
A. Yes.
Q. -- of the ads? All right.

60

If I could ask you, is there an identification number that would help us identify the ads listed on the compilation of ads that are on the video box?
A. Well --
Q. Or do you identify them by title?
A. Title.
Q. All right. Could you tell us the ads that you supervised, please.
A. "Silence." "Best Friends." "Pep Squad." "Numbers." "Smoke Screen." "Victim Wife." "Who to Believe." "Hole in Theory." "Toilet." "Baby Smokers." "Baby Blocks."
Q. I don't have 98 in front of me, but can you tell me what other titles of ads that are listed for which you are storing those ads at Asher but you did not play any role in supervising or creating?
A. "Secondary Smoke Bedroom." "Secondary Smoke Kitchen." "Secondary Smoke Living Room." "Secondary Smoke Car." "Waitresses." "Bartender." "Take It Outside." "Landfill." "ETS Kids Gold Country."
Q. Okay. Do you have any understanding as to who was involved in the production of the ads that you just articulated for me that you have custody of but did not participate in?
A. Who was involved in the production of?

61

Q. Hm-hm.
A. And who -- yes.
Q. And who was that?
A. "Secondary Smoke Bedroom," "Kitchen," "Living Room," and "Car," those were produced by Keye Donna Pearlstein. "Waitresses" and "Bartender" were produced by asher&partners. I was on maternity leave at the time. "Take It Outside" was produced by Imada Wong Commercials. "Landfill" was produced by Arnold

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Communications in Massachusetts. And "ETS Kids Gold Country," I'm not familiar with.

Q. The waitress and bar ad that was produced by Asher while you were on maternity leave, who was responsible for that?

A. Bruce Dundore.

Q. Okay. And, to your knowledge, did Asher play any role in supervising the production or creation of "Take It Outside" or "Landfill"?

A. No.

MR. L'ORANGE: Off the record.

(Discussion held off the record.)

MR. L'ORANGE: The record should reflect that we are playing the videotape for the witness so that she can visually confirm for us that the ads set forth on the tape are a true and correct copy of the ads that are

currently in Asher's custody but property of the State.

(Whereupon the videotape was played.)

BY MR. L'ORANGE:

Q. Miss Steele, now that you have had a chance to review the contents of the videotape, is it a true and correct copy of the ads that are currently being stored by Asher at the State's request?

MR. VANDERET: Are -- are listed on the video?

MR. L'ORANGE: Yes.

THE WITNESS: So do those ads -- are those ads what this log says?

BY MR. L'ORANGE:

Q. Yes.

A. Yes. There's two -- there's one ad, though, that I'm not familiar with, the "Landfill" ad, that I -- I thought was a different ad, and so I don't know who produced that. Earlier I said that Arnold had produced it. So I'm not familiar with that at all. And then the kids ad was produced by Arnold Communications, and I'm familiar with that.

Q. All right. To the best of your knowledge, though, are the ads as depicted on this tape true and

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

correct copies of the ads that are currently in Asher's custody, being stored at the request of the State?
A. Yes.

63
Q. Okay. In your meetings with the State, has any State official ever discussed with you why the State has made reduction of exposure to ETS a priority in the Prop 99 program?
A. Yes.
Q. Can you tell me who that was?
A. It's not a specific individual.
Q. Do you have an understanding as to why the State has made ETS a priority?
A. Yes.
Q. Can you tell me what that is?
A. Because for smokers, when they learn that their smoke actually hurts innocent people, they think twice about smoking.
Q. So the goal -- would it be fair to say that one of the State's goals is to reduce smoking by advising smokers that ETS may produce harm to nonsmokers?
MR. VANDERET: Objection. Lack of foundation. Calls for speculation.
THE WITNESS: Would you ask that another way?
BY MR. L'ORANGE:
Q. Have State representatives stated to you that one of the goals with respect to ETS is to alert smokers that their smoke may produce harm to nonsmoking parties?
A. Yes.

64
Q. Have there been any other discussions that you've participated in with State representatives as to why ETS is a priority in the Prop 99 program?
A. Yes.
Q. And what were those?
A. When consumers become aware of the dangers of secondhand smoke, they understand why smoke-free restaurants and bars are a positive thing for society.
Q. Okay. Any other discussions with the State

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

about why ETS was made a priority in the Prop 99 program?

A. Not that I recall.

Q. When were you first advised about the prioritization of ETS in the State's program in the Prop 99 program?

A. I don't know the specific date. I assume -- well, I don't want to assume, so I don't know.

Q. Can you give me an estimate?

A. 1992.

Q. Okay. What steps were taken at Livingston with respect to the ads that were created to emphasize the priority status that the State had given ETS?

A. That's -- it's a long time ago, and it's a little bit vague of a question. So I would need a more specific question to see if I can recall that far back.

Q. Okay. Once the State communicated to you that it was going to prioritize ETS, did Livingston undertake special activities -- creating more ads, making sure they aired more frequently, that ads had a greater exposure to larger populations if they addressed ETS?

A. There's a lot of questions in that question. So --

Q. Well, let me cut through all of it. Once you were advised the State was prioritizing ETS, what did Livingston do to comply with that request?

A. We developed ads that addressed the subject of ETS, and we placed them on the air.

Q. Did you develop, in terms of the totality of the campaign, more ads that dealt with ETS than any other subject since the State had prioritized it?

A. No.

Q. When you developed your -- is your budget for a period of a year?

A. It varies. Generally, we work on an annual basis, yes.

Q. Once the State prioritized ETS, was there more money in your budget devoted to ETS activities

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

as
opposed to other ad activities in the Prop 99 program?
A. The State didn't give more weight to ETS than

66

other strategic areas. We had the three strategic areas that you mentioned. Those have always been the strategic areas, and they have always received the same emphasis.
Q. Okay. With respect to the ads that were produced concerning ETS, did you or Livingston undertake any special attempts to see that those ads were aired more frequently or perhaps directed at a greater segment of the population in terms of where they were aired?
A. No.
Q. With respect to Asher, how has Asher handled -- let me rephrase that.
With respect to Asher's activities, how have they handled ETS portion of the Prop 99 campaign, given the fact the State has prioritized ETS?
MR. VANDERET: Object to the question as vague and ambiguous.
THE WITNESS: Will you ask a more specific question?
BY MR. L'ORANGE:
Q. Has Asher's handling of ETS ads -- strike that.
After Asher was awarded the contract in 1994, did the agency devote more of the budget to the creation of ETS ads?
MR. VANDERET: Than Livingston did?

67

MR. L'ORANGE: Than Livingston -- well, than Livingston, a greater percentage of the budget.
THE WITNESS: A greater percentage of the budget? No.
BY MR. L'ORANGE:
Q. Were there any activities undertaken by Asher to emphasize ETS as compared to the activities with respect to the other two priorities that you've articulated?
A. No.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

Q. Was an equal amount of the budget at Asher devoted to the creation of ETS ads as opposed to the other two priorities?
A. Yes.
Q. Were there any attempts to create ads that would air more frequently regarding ETS as opposed to the other two priorities that we've talked about?
A. No.
Q. Were there any steps at all taken by Asher which would distinguish its attempts to handle ETS as a priority? In other words, anything they did differently as opposed to how they handled the rest of the Prop 99 program?
MR. VANDERET: Object to the question as vague and ambiguous.

68

THE WITNESS: I don't know what that means.
BY MR. L'ORANGE:
Q. Did you do anything different with respect to ETS as opposed to the other prioritized items that comprised the Prop 99 program?
A. Different in what regard?
Q. Frequency of airing of ads?
A. No.
Q. Create more ads?
A. No.
Q. Increase the duration that ETS ads ran as opposed to other ads?
A. No.
Q. Was consideration given by Asher -- let me rephrase this.
Did Asher make attempts to design ads to address ETS exposures in homes and in cars at any time from 1994 till the present?
A. Yes.
Q. And what ads were those? Can you identify by title?
A. "Baby Smokers." "Baby Blocks. That's it.
Q. Can you tell me your recollection as to when these two ads were produced?
A. Within the last two to three years.

69

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. Now, prior to the last two to three years and "Baby Smokers" and "Baby Blocks," have any other ads regarding ETS in homes and cars been produced by Asher?
A. No.
Q. Were any ads regarding smoking in homes or in cars produced by the ethnic subcontractors dealing with the media?
A. Yes.
Q. Can you tell me what --
A. At Asher or --
Q. From the '90 -- well --
A. '92 or '94?
Q. Let me go back and clarify.
In the '92 to '94 time period, were there any ads that you were aware of produced by ethnic subcontractors which addressed ETS in homes or cars?
A. Yes.
Q. And I'm going to use ads across the board -- video --
A. Okay.
Q. -- radio, billboards, newspaper advertisements.
A. Yes.
Q. All right. Can you tell me what those ads were?
A. I can't give you a comprehensive list. If I

had a list, I could identify it.
Q. I will take your best estimate.
A. So you want the titles?
Q. Please.
A. Spanish ad called "Hidden Killer" developed by an agency named Anita Santiago.
We're doing '92 to '94?
Q. Yes, ma'am.
A. That's the one that comes to mind.
MR. L'ORANGE: Miss Steele, if I may, let me show you a document that we obtained from the California Department of Health Services. I'm going to ask the court reporter to mark this next in order.
MR. TERRY: Do you want me to run a copy?
MR. L'ORANGE: Yeah. Let's go off the record a minute.
(Discussion held off the record.)
(The document referred to was marked

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

by the C.S.R. as Defendants' Exhibit 99
for identification and attached to and made a part of this deposition.)

BY MR. L'ORANGE:

Q. Miss Steele, if I may, let me represent to you that this is a document that we obtained from the Department of Health Services, and it has been

71

represented to us that this is a chronological listing of the advertisements utilized by the Tobacco Control Section.

And, again, this is not intended to be a memory test, but if I could ask you to review the document for a minute in the hopes that it refreshes your recollection as to identifying for us ETS advertisements, whether designed for minorities or the general population, that addressed ETS in cars and homes in the 1992 to 1994 time frame. And we'll take it from the '94 to the present.

A. Okay. So ETS ads, '92 to '94?

Q. Yes, ma'am.

A. Okay.

Q. And actually, if you have some understanding that an ad was produced in the 1990 to 1992 time frame, if you could indicate that for me as well.

A. Okay. "Secondary Smoke Bedroom" in the '90 to '92 period.

Q. Okay.

A. "Secondary Smoke Kitchen" in the '90 to '92 period.

"Secondary Smoke Living Room" in the '90 to '92 period.

"Secondary Smoke Car" in the '90 to '92 period.

72

"Delivery Room" in the '90 to '92 period.

So these are the ones I recall. There's some I don't recall what they are.

Q. That's fair.

A. "Like Father, Like Son" '92 to '94 period.

"Poisons," '92 to '94 period.

"Hidden Killer," '92 to '94 period.

"Chain," '92 to '94 period.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

" Lonely Mary," '92 to '94 period.
You're saying home or car?
Q. Please. Or if I could rephrase the question,
if you could identify ETS ads for us the time period
that they ran, and to the extent whether they addressed
home or car or a specific location, that would be
helpful as well.
A. These risk of smoking spots, I'd have to see
them, see if -- whether they addressed it or not.
Q. Okay.
A. Some of them address it. I just don't know
which ones.
Q. "It" being ETS?
A. ETS.
"Numbers," '92 to '94, smoking in restaurants.
Q. Where are you reading from?
A. Page 7.

73

MR. VANDERET: Fax -- fax page.
THE WITNESS: Fax 7.
MR. L'ORANGE: Sorry. Let me catch up with
you. Okay.
THE WITNESS: Mary --
MR. VANDERET: You're on the wrong page.
MR. L'ORANGE: I'm sorry. Okay.
THE WITNESS: Smoking in restaurants.
MS. SHERIDAN: You said that's on fax page 7.
THE WITNESS: Hm-hm.
MR. GROSS: "Smoking in Restaurants"?
THE WITNESS: Oh, no, numbers. The subject
matter is smoking in restaurants. ETS in restaurants.
MR. GROSS: Oh, for the numbers? I see.
THE WITNESS: The -- the spot entitled
"Numbers" --
BY MR. L'ORANGE:
Q. I see. I'm sorry.
A. -- is about smoking in restaurants.
Q. All right. Gotcha.
And that was the -- what time frame?
A. '92 to '94.
Q. Okay.
MR. GROSS: I just want to clarify for the
record, when you refer to '92 and to '94 and '90 to '92,

74

those are the dates that it aired?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

THE WITNESS: Those were the dates that it was produced, not the dates that it aired. It may have aired during that time. It may not have.

"Baby in Playpen." "Smoking in the Home."

BY MR. L'ORANGE:

Q. Where are you reading from?

A. Page 8 on the bottom.

Q. Okay. Is that the '92 to '94?

A. No. I think it's '94 onward.

Q. Okay. And you also said "Smoking in the Home"? I'm sorry that was the preface. All right.

A. So are we just doing television ads or we wanted to go through everything?

Q. We'll take radio, TV.

A. Okay. So let's see.

These ads on page 9 of the fax document were produced prior to my time. And on page 10 also.

Q. Okay. Because they were produced prior to your time, you don't have personal knowledge as to whether they address ETS.

Would that be a fair statement?

A. I couldn't say for sure.

"Secondhand Smoke," radio, page 11 of the fax.

Q. Now, there's a check mark with respect to two

of the radio ads, "Dating" and "Chemicals," and it says "withdrawn."

A. Hm-hm.

Q. Can you tell me what that means?

A. No.

Q. To your knowledge, did the ETS ads on radio -- well, let me go back and rephrase that.

Which of the radio ads are we referring to that are ETS?

A. That's what I'm going through --

Q. Oh, okay.

A. -- right now.

So -- so far, we said that on page 9 and 10, I can't be sure because it was prior to my time.

Q. Okay.

A. And on page 11, I said "Secondhand Smoke."

Q. Anything else on page 11?

A. "Sensitive Nose" I and II. "Menu." Page 13, "Cow/Rat."

Q. And that would be from '94 on?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

21 A. Yes.
22 Q. Okay.
23 A. "Secondhand Sound."
24 Q. Again, '94 on?
25 A. Right. All of these from now on will be '94

76

1 on.
2 Q. Okay.
3 A. "Baby in Playpen." "Like Father, Daughter."
4 "Like Mother, Son."
5 Then moving to page 14 of the fax, these are
6 outdoor ads. "No Smoking Section."
7 Q. This would be in the time frame somewhere
8 between roughly 1990 and 1992.
9 Would that be a fair estimate?
10 A. I believe it's '90 -- yes. I believe so.
11 Page 16 of the fax, "Try Secondhand Smoke." "Wake Up
12 and Smell" -- these are from '92 to '94. "Wake Up and
13 Smell the Secondhand Smoke." "You Think Smoke Knows How
14 to Stay in the Smoking Section."
15 Page 17 of the fax document, "Secondhand Smoke
16 Will Kill 50,000 Nonsmokers." "Si tu fumas, ella fuma,
17 if You Smoke, She Smokes." "Lonely Mary." "Eric
18 Jones."
19 Q. And each of these would have aired in the '92
20 to '94 time frame?
21 A. Yes.
22 Q. Okay.
23 A. No, each of these would have been produced in
24 the '92 to '94 time frame.
25 Q. All right.

77

1 A. All the dates I'm giving are when the
2 commercials were produced. Not when they aired.
3 Q. Okay.
4 A. "Weapon," '92 to '94. "Smoking Section," '92
5 to '94. "Daddy's Eyes," "Mamma's Eyes." "Baby in
6 Playpen." "Sarita."
7 Actually, I take back "Sarita." I don't know.
8 Q. Is it your understanding that the ads which you
9 have identified for us on Defendants' 99, while they may
10 have been produced in the years that you

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

indicated for
us, all of these ads aired at some point between about
1990 and the present?
A. I'd have to go through ad by ad and try and
recall which one aired, and I wouldn't be able to recall
when it aired.
Q. As you sit here today, are there any of these
ads that you have identified for us which, to the best
of your knowledge, have not aired at any time between
1990 and the present?
A. You know, I wasn't marking as I went along. So
I can look at your sheet if you want or --
Q. Okay.
A. I don't know whether "Bedroom," "Kitchen," and
"Living Room" have all aired between 1990 and the
present.

I don't know whether "Like Father, Daughter."
"Like Mother, Son" ran -- aired between 1990 and the
present.
MS. SHERIDAN: What page are you on?
THE WITNESS: Page 13 of the fax.
I don't know whether "No Smoking Section" was
posted between 1990 and the present. I don't know
whether "Try Secondhand Smoke," "Wake Up and Smell the
Secondhand Smoke," "You Think Smoke" all on page 16 of
the fax document, were posted between 1990 and the
present.
BY MR. L'ORANGE:
Q. And I'm sorry. When you use the term "posted,"
do you mean actually put up to --
A. Yeah. Yes.
I don't know whether if "Secondhand Smoke Will
Kill 50,000 Nonsmokers This Year" was posted between
1990 and the present. I don't know whether "You Smoke,
She Smokes" was posted. I don't know -- no, that's it.
Q. Okay. Do you have an opinion as to who the
best person to ask would be about when these ads either
aired or posted outside of yourself?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

A. I would say there wouldn't be a person that could give you that information. It's -- but it is in the records that we supplied you with.

79

Q. Okay. In your discussions with State officials, have they ever discussed with you the creation of an ad designed specifically to reach the issue of ETS in homes or in automobiles?
A. In homes, yes.
Q. And when did those discussions, to the best of your recollection, take place?
A. 1996 or '7.
Q. And with whom did you have these discussions?
A. The members of the Tobacco Control Section, State of California.
Q. Would Colleen Stevens be one of the persons?
A. I'm not sure if she was in the meetings or not.
Q. Can you tell me, to the best of your recollection, any of the people from the Tobacco Control Section that were present?
A. I remember having meetings. I can't recall who was in the meetings.
Q. Can you tell me the substance of the statements made by the State representatives?
A. We should do advertising that addresses the dangers of secondhand smoke in the home.
Q. Was there any explanation offered to you as to why the State wanted to do that?
A. Because there's still children in homes of

80

smokers who are unprotected.
Q. What was Asher's response to the State's statements about creating ETS ads addressing the situation in homes?
A. We developed the ads "Baby Smokers" and "Baby Blocks."
Q. Now, in addition to your activities in developing these two ads, did the minority subcontractors also develop ads during this time period addressing ETS in the home?
A. I don't recall their exact -- I don't recall

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

their exact assignment.
Q. Outside of "Baby Smokers" and "Baby Blocks,"
which are both television ads --
A. Yes.
Q. -- were there any other ads on any other medium
that were developed by Asher in response to the ETS-in-the-home issue?
A. I would need to see a list to refresh my
memory.
Q. Can we go back to Defendants' 99.
Does that refresh your recollection at all?
A. Could you state your question again.
Q. Sure.
You've advised us that in response to the

State's requests, two television ads were created, "Baby
Smokers" and "Baby Blocks."
My question is, in addition to those two
television ads, did Asher or the subcontractors or
anyone else that you're aware of produce any other form
of advertisement on radio, billboards, announcements in
newspapers, fliers, to deal with the ETS-in-the-home
issue as raised by the State?
A. The primary ads developed in response to that
request are the two I mentioned.
Q. Okay.
A. That I recall.
Q. All right. In addition to the two ads you've
described, at any time between 1996 and the present, has
the State asked Asher to do any additional ads that
address ETS in the home or the car?
A. No.
Q. Okay. To your knowledge, has any minority
subcontractor produced any form of ad, whether written
or radio or television, which addresses ETS in the home
in the '96 to the present time frame?
A. The minority subcontractor strategies deal with
ETS. Whether they deal with ETS in the home or not, I
don't recall.
Q. Now, let's broaden out the question with

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

respect to ETS.
Does the videotape that you reviewed for us,
Defendants' 98, have all -- contain all of the ETS ads
created or produced by Asher?
In other words, are there others out there that
we don't have reflected on this tape?
A. I would have to look at a comprehensive list
against this list in order to tell you that.
Q. All right. So to arrive at that conclusion, we
might have to look at Defendants' 98 as compared to
Defendants' 99, which is, at least according to DHS, a
listing of all of the Tobacco Control Section
advertisements?
A. This isn't a list of all of the advertisements.
Q. There are others besides what are contained on
Defendants' 99?
A. I believe so.
Q. Okay. And I'm sorry. What would lead you to
that conclusion?
A. Because I am aware of certain ads that aren't
on this list.
Q. How many ads are you aware of that are not
reflected on Defendants' 99?
A. I couldn't guess. I don't know.
Q. Can you give me an estimate? Are we talking

about --
A. No.
Q. -- one to five?
A. Because some are missing, I -- I really can't
give you an estimate, no.
Q. All right. Do you have any idea as to who
would maintain a comprehensive list? Is that something
that would be maintained by DHS in Sacramento, or is
that something within your organization?
A. DHS in Sacramento.
Q. Do you know who would be the custodian of that
information?
A. No.
Q. When Asher began to create ads in the 1994 to
present time frame, is there an organization or a

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

company that it works with to track the number of people who see the ad?

A. No.

Q. How do you arrive at any figures or conclusions as to, for want of a better term, the depth of penetration the ad has with respect to the population?

A. You will never know for sure if you saw an ad or not because you're not in the home of every Californian.

Q. Are there mechanisms or procedures or follow-up

84

that Asher or a subcontractor of Asher employs to try and get some determination as to a percentage of the population that has seen the ad, like the Nielsen ratings?

A. Yes.

Q. And how is that performed?

A. When we develop media plans, we work with a company I mentioned earlier called Telmar.

Q. Telmar?

A. And we -- do you want the methodology or --

Q. Please.

A. We input the ratings of the shows by date part.

Q. I'm sorry?

A. We input the ratings of the shows that we're purchasing --

Q. Okay.

A. -- by day part into this Telmar system which we access via our computers, and we also input the showings of the outdoor buy and we estimate a rating of the radio programs we're buying, and this system crunches all that information together and comes out with an estimated reach and frequency for the consumers that we're targeting --

Q. Okay. Now --

A. -- by medium, and then an in total reach and

85

frequency for the campaign. "Campaign" meaning the media effort.

Q. Bear --

A. Not ads.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. Yeah. Bear with me for a minute.
When you talk about the reach of the campaign,
that's the total number of people that you've reached
with the message?
A. Hm-hm.
Q. Would that be a fair characterization?
A. Hm-hm, yes.
Q. Now, what do you mean by "frequency"?
A. The number of times.
Q. When you do your media buy, do you specify the
number of times you want the ad to run, or are there
exogenous factors that play into that that are beyond
your control?
A. Could you rephrase that.
Q. I'm not sure I can. What I'm asking is, when
you do -- when you're looking at the frequency of the
ad, do you specify in the media buy how frequently you
want the ad to run, or is the frequency determined by
factors that are really out of your control?
A. The frequency is determined by how much money
you have.

86

Q. All right. So I can spend $50,000, and it runs
ten times. I could spend $100,000, and arguably it may
run 20?
A. Right.
Q. Okay. With respect to the ETS ads, is there an
attempt when you do the media buy -- strike that.
When you're going to place an ETS ad, how do
you determine what show you want to purchase in order to
air the ad?
A. We don't really do it that way.
Q. Tell me how you place the ETS ads.
A. Well, the ETS ads aren't specifically pulled
out into a different category from all the other ads
that we place. We develop ads for the media campaign.
We buy media, and then we place those ads in the media.
Q. All right.
A. So we don't pick certain shows for certain ETS
ads.
Q. When you buy, for instance, your time

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

on
television --
A. Hm-hm.
Q. -- for your media campaign, what are the
factors that influence that media buy?
A. Will the programs we're buying reach the
consumers that we're trying to reach in a cost-effective

87

way.
Q. Now, can I stop you there for a minute.
When you talk about "buying a program," what do
you mean by that?
A. When you purchase a program on the air on
television.
Q. So, in other words, just to make sure I'm on
the save wavelength with you, if I wanted to reach the
baby boomer generation, I might buy "Leave It to Beaver"
and have an antismoking -- hey, guys, you got to go with
what you're familiar with, you know?
I might -- is that what you mean when you talk
about buying a program?
A. Let me try and explain it.
You say we have this set amount of money, and
we want to reach adults 18-plus. What shows exist that
reach adults 18-plus? Some reach them really well
because they have high ratings against adults 18-plus.
Some reach them not as ideally, but they're cost
effective. So you marry what you can afford with what
does a good job of reaching the target that you're
trying to reach, and you make a purchase.
And our company doesn't purchase the media.
Western International does. So their media buyers
really do this effort.

88

Q. All right. And, again, not to take an extreme
example, but if you were trying to reach males 18 and
over, you might place the media buy with "Baywatch" as
opposed to the Jim Lehr report on PBS; true?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

A. Yes. Certain shows deliver certain audiences more effectively.
Q. Okay. Do you rely upon recommendations from Western International Media, or do you have your recommendations to Western International Media as to what shows you want to buy?
A. Western International Media recommends the shows.
Q. Okay. Do you know how they arrive at their recommendations?
A. No.
Q. This is the company that Mr. Silverman is currently at?
A. Hm-hm.
Q. How long has he been with them? Do you know offhand?
A. Three or four years.
Q. Okay. And it's Western International Media?
A. They just changed their name, actually. So I don't know their new name.
Q. Okay. They have been in the past Western

International Media?
A. Yes.
Q. All right. During the time -- now, is Mr. Silverman the person at Western that supervised the media buys, or does someone else do that?
A. I don't know what Mr. Silverman does there.
Q. Okay. Has he remained in contact with you during the time that he has been at Western?
A. No.
Q. All right. Have you had any contact with him at all?
A. I've seen him.
Q. Okay. I mean, outside of physically seeing him, have you spoken to him at all?
A. Yes.
Q. Have you spoken to him in connection with the Prop 99 program?
A. No.
Q. Okay. Has Mr. Silverman, at any time that he's been with Western, to your knowledge, ever voiced any criticism of how Asher is handling its

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

responsibilities
under the Prop 99 program?
A. I'm not aware of that.
Q. Okay. During the time that you dealt with
Mr. Silverman when he was at Asher, I believe as the

90

president --
A. Yes.
Q. -- did he at any time voice criticisms of how
the programs were being designed for Prop 99 by Asher?
MR. VANDERET: You mean overall or --
MR. L'ORANGE: Yes, sir.
MR. VANDERET: -- a particular show?
MR. L'ORANGE: Generally or particularly.
THE WITNESS: No.
MR. L'ORANGE: Okay. Off the record for a
minute.
(Discussion held off the record.)
BY MR. L'ORANGE:
Q. Going back to your earlier testimony, you
indicated to us that the State's overall priority is the
reduction of the prevalence of smoking in the state of
California?
A. Yes.
Q. All right. And the way that the State sought
to achieve that was by prioritizing reduction to ETS,
youth access to tobacco, and countering the pro-tobacco
influences in the community?
A. And some additional efforts.
Q. All right. What were the additional efforts?
A. Focus on supporting the smokers help line,

91

which is a phone number that people can call if they
want assistance in quitting. So I would add, as a
fourth priority, cessation efforts.
Q. Have there been discussions that you have
participated in with the State that achieving goals such
as the reduction of youth access to tobacco or
countering the pro-tobacco influences in the community
also served to reduce the amount of ETS because you are
reducing the amount of smoking?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

A. No.
Q. All right. That topic has not come up at any time?
A. No.
Q. Has that topic been discussed by Asher representatives in the course of creating ads or ad campaigns?
A. No.
Q. Can you describe for me how the creative process works at Asher when you are defining what your ad is going to look like?
A. It's the same process as the one I mentioned took place at Livingston with developing the strategies, going over those with the creative people. They come up with concepts. We review them. We present them to the client. They approve them or not.

92

Q. Now, the strategy is a result of your discussions with people at the Tobacco Control Section; true?
A. It's a result of a lot of factors.
Q. All right. Tell me how the strategy is put together.
MR. VANDERET: Particularly for this?
MR. L'ORANGE: Sure, please.
THE WITNESS: For TCS? Okay.
MR. L'ORANGE: For TCS and ETS in particular.
THE WITNESS: We look at secondary research materials, which I told you what those were.
We look at focus group information, if there is any.
We look at the environment in general and give it our best shot as marketing professionals.
We talk to the client about what they think their needs are. We discuss the issue with our public relations affiliate.
And based on the input from all those various people and sources of information, we come up with a strategy that we think will be effective in reducing the prevalence of smoking.
BY MR. L'ORANGE:
Q. Okay. Let me take you through those one at a

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

93

time very briefly.
A. Okay.
Q. The public relations affiliate is Rogers & Associates?
A. Yes.
Q. How long have they been, to your knowledge, the public affiliate?
A. Since 1994.
Q. So they have been working in conjunction with Asher for the period of time that Asher has had the Prop 99 contract?
A. Yes.
Q. All right. Can you tell me what is the -- what is the nature of the relationship between Rogers and Asher when you are discussing strategy for an antismoking campaign?
A. The nature of the relationship?
Q. Yeah. It's badly phrased.
What I'm really getting at is when you and Asher get together --
MR. GROSS: Rogers.
BY MR. L'ORANGE:
Q. -- and you talk about strategy, what -- what do you talk about?
A. We talk about all those things I mentioned.

94

Q. Now, how do you two work together to design a strategy?
A. We sit down and we talk.
Q. Okay. But can you tell me what the creative process is? How are the tasks allocated? Who takes responsibility for what?
A. It's kind of vague what you're asking.
Q. What are Asher's duties as you -- I'm sorry -- what are Rogers's duties as you understand them to be as the PR representative?
A. They are in charge of all public relations efforts with the State of California.
Q. You handled the media?
A. Right. Paid media.
Q. And that's radio, television, billboards, newspaper, advertisements.
A. Right.
Q. Anything else?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

A. We handle paid media.
Q. Okay. Are there types of paid media other than the four that I've laid out?
A. Yes.
Q. What are they? What other types do you handle? In connection now with the Prop 99 program.
A. Web site. I can't remember the things we just

95

proposed and which has been produced. You know, sometimes we do floor mats or posters.
Q. Floor mats as --
A. That go in convenience stores. Posters. We call it kind of guerilla marketing tactic kind of things. Kind of one-off. I don't know how to explain it. They are paid media types that are less conventional than the four you mentioned, but they're not a majority of our effort.
Q. Okay.
A. So we may have done some of those.
Q. Now, if you handled the media, if you would tell me, to the best of your knowledge, what is it that Rogers & Associates do? What expertise do they bring to the table?
A. They handle press coverage. They work with a lot of the local lead agencies and community-based organizations throughout the state, helping them to kind of unify their effort. They do outreach activities at a local level.
Q. Now, would they draft press releases for people for local lead agencies or community grantees?
A. They draft press releases. For who, I don't know.
Q. Do they draft public service announcements to

96

be utilized at the local level? And I'm talking about PSAs on radio stations. PSAs that may be printed and placed on buses.
A. No, I don't believe so.
Q. Do they draft any public service announcements, to your knowledge, at all?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

A. I'm not -- I'm not sure.
Q. When you are putting together a series of ads or a media campaign, do you discuss with Rogers & Associates the possibility that they also have activities that occur during the same period of time and address the same subject that's being addressed in the ads or the media campaign?
A. No.
Q. Has that ever occurred from 1994 to the present that you're aware of -- you've embarked on a series of activities and Rogers attempts to embark at their level on a similar series of activities?
A. Yes.
Q. And can you tell me the circumstances under which that occurred?
A. I remember that they did some sort of outreach effort, some kind of public relations effort on bars going smoke-free at the same time that we ran our ads addressing secondhand smoke in bars.

97

Q. Okay.
A. That's the only coordinated effort I can really recall, although in the RFPs that we've done together with them, we always proposed doing things simultaneously, but it doesn't necessarily happen.
Q. All right. If the coordinated activity occurred only once in connection with the smoke-free bars, as you understand it, what is the reason to consult with Rogers when you are in the process of creating a strategy for ads or an ad campaign if your activities are going to be different?
A. Because, like ourselves, they are very aware of what's going on with the antismoking environment and issues, and we respect their intelligence. We think they're good people to consult in terms of overall strategic direction.
Q. So they are used in some sense as, if you will, a consulting or resource group?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

A. A partner. No. It is just they work on this topic. We work on this topic. So we talk to each other.
Q. You also indicated that you review research material, and you and I went through a couple times trying to figure out what all that was.
Can you give me some general idea, during the

98

time that you have put together ad or media campaigns, what types of material you reviewed to put these ads together?
A. I think I addressed that earlier when I listed out the different types of materials that we look at. When you asked how we come up with -- with the strategies, I listed the various ways that we come up with strategies, including the kind of materials we look at.
Q. These are the research materials that you discussed earlier?
A. Hm-hm.
Q. Anything outside of the research materials?
A. No.
Q. Now, you indicated that you may review the results of focus groups?
A. Correct.
Q. All right. When Asher has designed ads or media campaigns from '94 forward, has it conducted independent focus groups to determine whether or not this is an ad or a campaign that should go forward?
A. Primarily we test strategic areas prior to developing the ads. And then we develop the ads. Sometimes we test the ads. Sometimes we don't. Primarily, we don't.

99

Q. Can you tell me what you mean when you say we test the strategic areas with focus groups?
A. When you're developing the strategy, there's a variety of ways that you could propose it to a

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

client --
or to a consumer. We call them positioning statements.
And so we may test a variety of positioning statements
or strategic angles with our consumers to see which one
would be most powerful. Then we learn that, and we
develop ads based on that.
Sometimes we test ads to help consumers see
what we mean by a positioning statement. It's kind of
an example. But we don't usually test the creative
we've developed to determine whether it should run. By
that point, we already know it should run because the
strategy was strong.
Q. Have you conducted focus groups in connection
with ETS ads?
A. Since I've worked on the campaign, we've
conducted probably a thousand focus groups. So whether
a focus group was specifically on ETS or a variety of
subjects, I don't know. I'm sure it's come up.
Q. What I'm trying to get a feeling for is how you
utilized a focus group, and we're talking more
conceptually here than anything else. What I'm trying
to do is get my feet on the ground with how you

approached them.
If we can for a minute consider a hypothetical
focus group and you wanted to address ETS as an issue,
how would you present that to a focus group from a
strategic standpoint? What information are you looking
to gain from that focus group?
MR. VANDERET: Object to the question as vague
and ambiguous. Calling for speculation. Lacking
foundation.
THE WITNESS: Yeah.
BY MR. L'ORANGE:
Q. You've participated in focus groups in the past
with respect to the design of the antismoking campaign.
True?
A. Yes.
Q. All right. When you participated with

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

those
focus groups, what were you looking for from a strategic
standpoint? What input do you want back from them that
helped you focus the campaign?
A. What I said earlier, which is we're trying to
determine which strategic angle would be most powerful.
Q. And, again, I don't traffic in your industry so
I apologize --
A. Hm-hm, right.
Q. -- for my ignorance.

101
When you talk about a strategic angle, is that
a decision, for instance, whether to have the ad deal
with secondary smoke and children perhaps to produce a
more emotive response or the ad to deal with smoking in
bars? Are those the types of strategic angles that
you're analyzing?
A. You know, I'd have to -- again, because there's
been so many, I don't want -- you know, I can't use that
as an example 'cause I don't know whether we've really
tested those two things one versus the other. I can
give you an example, like if I was marketing a soft
drink. That would be really helpful, right?
Q. Only if it's the real thing.
Let's use that as an example and see if we can
segue in.
A. Okay. 'Cause -- 'cause I know you don't
understand.
Q. Yeah. You're talking conceptually, and
regrettably, my profession often doesn't let us do that,
so we deal in facts.
So if you were going to market a soft drink,
what would be the strategic angles that you would
consider?
A. Okay. So we would write statements, and we
would say, okay, should Coke be marketed as a refreshing

102
drink, or should it be marketed as a drink that

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

should
be enjoyed after you've completed a rigorous sporting
activity? Or should it be marketed as having no
calories at all, so you won't add any weight, but you'll
get a refreshing taste? I mean, you know what I -- get
it?
Q. I do. All right. Now, from the tobacco
standpoint, if you are going to use focus groups and
you're considering strategic angles, would an example of
a strategic angle be highlighting the health effects of
secondary smoke to an adult as opposed to a child?
A. You mean like could that be one or had it been
one?
Q. Sure. Could it be one?
A. Could it be one? Yes.
Q. Okay. Would another example of a strategic
angle be a secondary smoke commercial that deals with
smoking in the automobile and the danger that it
presents to people who are passengers?
A. Could it be?
Q. Yeah.
A. Yes.
Has it ever been researched? No.
Q. Okay. Now, when you meet with focus groups,
does Asher retain an evaluation of the comments made by

the focus groups?
A. It's the groups -- some -- yes, there's reports
generated by the moderator.
Q. Okay. Now, do you know where those reports are
for the focus groups?
A. TCS should have all the focus group reports.
Q. Now, you also indicated you consider the
environment in general in crafting your strategy.
What did you mean by that?
A. Just kind of what's going on in the world.
Where -- you know, reading trend data or noticing what
people are doing. Just living life and observing
consumers and people and trends and what you

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

read in the
papers and what you read from journals. Just taking
everything into account that goes on around you
regarding this issue and assessing it.
Q. Okay. Now, you also indicated that you have
discussions with your client, State representatives --
A. Yes.
Q. -- from TCS. Can you give me -- can you
summarize generally -- strike that.
Once you determine what your strategy is going
to be, is a summary of that strategy imparted to
Rogers & Associates for their review?
A. No.

104
Q. They simply participate in the creation of the
strategy, but the final strategy itself remains within
Asher?
A. Sometimes, 20 percent of the time, Rogers
participates in coming up with the strategy together
with us.
Q. Is there a reason -- are there factors that
determine what the 20 percent will be versus the 80
percent when they're not there? Is it driven by topics?
Is it driven by the type of media? Is it driven by what
you want to accomplish?
A. I would say if we believe that they have an
especially -- if they have a greater understanding of a
strategic area then we might, based on what they have
been doing recently, they might be brought in. Or if
it's a point in time where we're developing a request
for a proposal for the State where it's literally do we
win the business or not, you know, we would engage them.
But generally, on a day-to-day basis, you know, the
client says we would like to do an ad on this and we all
agree, we would just write the strategy ourself.
Q. So, in other words, did Rogers play a role in
your response to the latest RFP?

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

A. No, because they -- no, they did not. In that case, no.

105

Q. Okay. In creating your strategy, do you go to outside experts to assist you with the message? For instance, would you bring in a social psychologist to tell you whether or not a particular ad was likely to produce more of an emotive response given the segment of society that you're directing it to?

A. No.

Q. Do you utilize any form of expert -- medical, sociological -- in the creation of your ads?

A. No.

Q. When you are putting together your ad or your campaign, based on the statements that you make in that ad, do you then seek any form of substantiation on those on the statements that you make?

A. Yes.

Q. How do you go about doing that?

A. My account management staff looks at secondary research materials. Things like medical journals. Articles provided by the State. Anything that would substantiate the claims we're making. So they seek those out, and then they attribute them to the statements that we're making in the ads, then we send those to the State.

Q. Okay. Now, the creative concept -- once you've defined what your strategy's going to be and you go down

106

and see your creative folks, tell me how that process works.

How do they come up with the ideas to use for a particular ad or a particular campaign?

A. We go down and meet with them, and we give them a written strategic document. Says here's the angle we want to go after, and we ask them if they have any questions. And then they go into their rooms, and an art director and a copywriter sit down and they

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

think of
different concepts that are reflective of the strategy we gave them.
Q. Let's use as an example -- were you involved in the creation of the series of ads that dealt with Clifford, the guy in the gas mask? You mentioned there had been 21 of those commercials put together.
A. Yes, I was.
Q. All right. One of them dealt with him in the bathroom with two girls smoking. Another dealt with a pep squad --
A. Hm-hm.
Q. -- in the bathroom?
Were you involved in terms of strategy our supervision of those ads?
A. I was involved in the supervision of those ads.
Q. Now, using that as an example, do you go to

107

your creative folks and say, we want to deal with environmental tobacco smoke in a variety of contexts, and we'd like you to come up with creative approaches on how to deal with this. They then take and run with that and create the guy in the gas mask and the dialogue?
A. That's not how it went for that campaign, but in theory, it could have.
Q. All right. How did it go for that particular campaign?
A. For that campaign we said we want to do something that will address the teen smoking issue and we should probably have a character that's hip and someone they can relate to that makes it seem as cool not to smoke as to smoke. And that's all we said. It was probably the least strategic thing we ever did, so it's not the best example.
And then the creative people said why don't we do a campaign on all the -- a variety of the risks of smoking. And they, on their own, listed out as many as

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

they could think of and did individual ads based on all those different risks that they could think of and tried to use humor to reach teens. But that's not how it normally goes.

Q. All right. How it normally goes is what I described for you.

108

A. Uh-huh.

Q. All right. Now, do you monitor -- do you have a clipping service that monitors newspapers to keep you abreast of developments in the environment, if you will, with respect to antismoking?

A. Rogers & Associates provides us with those.

Q. All right. Do some of your creative strategies derive from what's going on in the marketplace as reflected in the clippings?

A. The creative strategies are developed based on all those different pieces of input I mentioned. That would be one thing we would look at and digest.

Q. Okay. Can you give me an example, if there is one, of a particular ad that was crafted in response to newspaper clippings that you might have reviewed?

A. Not in newspaper clippings alone, no.

Q. Okay. Is there an ad or a campaign where newspaper clippings were one of the factors but played a very large role?

A. No.

Q. Once the strategy's defined, it's been submitted to the creative folks?

A. Hm-hm.

Q. And you have essentially an ad or an ad campaign.

109

How does the approval process work with the State?

A. First, we show the ad -- it depends on what administration has been in place. So the approval processes vary greatly, depending who was the governor, what year it was.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. And that's what you mean by what administrations are --
A. Yes.
Q. All right. Well, let's -- I guess we can go BP and AP, before Pete and after Pete.
Did you submit ads with respect to the Deukmejian ?
A. I don't think so.
Q. All right. So the two administrations you've dealt with have been Wilson and Davis?
A. Yes.
Q. All right. Could you explain to me how the process worked under the Wilson administration?
A. Maybe I did do Deukmejian. I can do it by time.
Q. Fair enough.
A. Okay. So '92 to '94, we presented concepts to the Tobacco Control Section, and they -- they said we like, you know, eight out of ten. Let's, as a courtesy,

110

show these to the Department of Health Services administration, which they called the 12th floor.
And so they would show those to the, quote, 12th floor, which include people like the director of the Department of Health Services. And the 12th floor would say either yes, these are all fine. We don't see any political problems with any of these. Or let's pull a couple of these out.
Then things got more stringent and ads had to be shown jointly at the same time to the Tobacco Control Section and the 12th floor.
Q. Can you tell me approximately when that occurred?
A. Within the last four years.
Q. Okay.
A. And then they would move it up to the cabinet level, Secretary of Health level. And then she would move it up to the Governor, and then he would let us know what we could or couldn't air.
Q. Okay.
A. Now -- want to do now?
Q. Yeah.
A. Now.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. I want to know how my tax dollars are working.
A. We show the ads to the Tobacco Control Section,

111

and they send a package of the ads up to the 12th floor,
who then send them to the Governor, and he reviews them.
MR. L'ORANGE: Let me go off the record for
just a minute.
(Discussion held off the record.)
BY MR. L'ORANGE:
Q. In the context of the ETS program, from 1992
until the present, you indicated in your earlier
testimony that the ads were at least reviewed in various
levels for what you described as political problems.
Can you tell me what you mean by that?
A. Things that might be too aggressive from a
certain political point of view. Things that might not
be appropriate for certain groups of society. People
that might take offense at things.
Q. To your knowledge, between 1992 and the
present, have any ETS ads not been either posted or
aired because of perceived political problems?
A. No.
MR. L'ORANGE: Could we take about three or
four minutes, before which --
MR. VANDERET: Sure.
BY MR. L'ORANGE:
Q. Or just before I take a break, you had
mentioned that, in addition to the media that you've

112

described for us in the past, you also were involved in
programs that deal with web sites?
A. We did a web site for the Department of Health
Services Tobacco Control Section. We have a web site.
Q. Okay. That was designed by Asher?
A. Yes, it was.
Q. All right.
A. Asher in conjunction with a vendor.
Q. Do you -- does Asher create media messages to
be delivered over the Internet?
MR. VANDERET: You mean like banner ads and --

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

MR. L'ORANGE: You know, yeah, I -- I think I think that's the term. I've been to one or two seminars.
THE WITNESS: All that we've created for TCS is a web site.
BY MR. L'ORANGE:
Q. All right. You don't promulgate antismoking messages over the Internet? In other words, if someone were to tap into the TCS web site, there aren't a whole series of messages created by you that come back or on request?
A. Our ads may be posted on there. The ads that we've already been discussing. I'm not sure --
Q. Okay.

113

A. -- if they're on there yet or not. They probably will be.
Q. Certainly, with respect to asher&partners' current web site, a number of your ads are included in that web site; correct?
A. Yes, yes.
MR. VANDERET: You mean --
THE WITNESS: See, there's two web sites. There's asher&partners' web site, which reflects the work that we do for your client --
BY MR. L'ORANGE:
Q. Right.
A. -- and then there's the Tobacco Control Section web site, which may or may not contain their advertisements at this time.
Q. And my last question really referenced the latter web site --
A. Okay.
Q. -- that's created by asher&partners.
Okay. Can we take about five minutes here?
MR. VANDERET: Sure.
MR. L'ORANGE: Let me get organized and --
(Recess taken.)
MR. L'ORANGE: Back on the record.
Q. Miss Steele, prior to this deposition, were you

114

at any time contacted by the attorneys representing the plaintiffs, being either Mr. Roger Carrick, Mr.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Brian
Brookey from the law firm of Preston, Gates & Ellis?
A. No.
Q. Do you have any understanding as to whether they contacted your agency in an attempt to speak to you but were referred to your attorneys?
A. I don't know.
Q. Do you have any personal knowledge as to whether your attorney has spoken to them at all?
MR. VANDERET: Objection to the extent it calls for invasion of the attorney-client privilege.
MR. L'ORANGE: Fair enough.
Q. Other than what your attorney may have told you, do you have any independent knowledge?
A. No.
Q. Okay. Since 1994, have you attended any conferences with Tobacco Control Section representatives which were specifically devoted to assessing the success of the ETS ad or ETS campaign that Asher was producing?
A. No.
Q. To your knowledge, has there been any type of evaluation outside of the Wave 1 report undertaken by anybody, either private or affiliated with the State, to assess the success of the ETS ad campaign put together

115

by Asher?
A. No.
Q. Are there -- now, you indicated to me earlier that Telmar can give you some idea as to frequency and --
A. Reach.
Q. -- reach of the various ads that you produce.
Do they also provide you with data -- strike that. Let me rephrase it.
Is the Telmar data the only data that you're aware of outside of the Wave 1 report that can be used to evaluate the success of a particular ad produced by Asher?
A. Well, the Telmar data isn't designed to

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

evaluate the success of an ad.
Q. Let me pick it up there. When I talk about success of an ad, I take it -- I'm thinking in terms of how pervasive it was, essentially the approximate number of people that it reached, and whether it, in fact, reached those folks with a meaningful message. I'm not talking about whether there's been a successful change of behavior at the other end. So when I talk about success, that's what I'm driving at.
A. Okay.
Q. Outside of the Telmar data, are you aware of

116

any other private or state-affiliated organization which is trying to measure the success of the ETS campaign or ETS series of ads?
A. During what time period?
Q. '94 to the present.
A. I'm not aware, no.
Q. Okay. How about '92 to '94?
A. There was a company who was contracted with by the State named IOX Communications, who measured the effectiveness of the advertising campaign, not just -- not ETS specifically.
Q. And is IOX I-O-X?
A. Yes.
Q. Are they still in business?
A. I don't believe so.
Q. Do you know if they were merged or acquired?
A. I think they went out of business.
Q. Okay. Any idea what -- do you know how recent that was?
A. No.
Q. Okay. Let me go back and just rephrase my earlier question.
Was there any company contracted for or contracted by the State to evaluate the effectiveness of the Prop 99 program from '94 to the present, not just

117

ETS?
A. Well, I believe they had some kind of contractual thing with Gallup.
Q. Okay.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001

A. And I know they have some kind of relationship with UCSD. What exactly UCSD measures, I'm not sure.

Q. Okay. Now, the Wave 1 report makes mention of Gallup, Stanford, and the University of Southern California.

Is it your understanding that in addition to these three organizations, the University of California at San Diego also undertakes some form of an evaluation on the effectiveness of the program?

A. I would believe that the University of California they're referring to is University of California, San Diego, but I could be wrong.

Q. Okay. And, again, with reference to whether it's San Diego or the University of Southern California, you're looking at the Wave 1 report as the evaluation; correct?

A. (Shakes head.)

Q. That's poorly phrased.

What I'm trying to make sure of is there's not another evaluation process that may be run by UC at San Diego in addition to what has already been run by

118

Gallup, Stanford, and the University of Southern California, USC?

A. Oh, I see. That's -- oh, I'm sorry. I didn't say that. I thought you said University of California.

Yes, that's something done by University --

Q. It's the other guys.

A. University of California at San Diego does some kind of large-scale research study for the State.

Q. Do you have any understanding as to what that's about?

A. It's incredibly comprehensive, and I believe it's in the documents that we gave you.

Q. Okay. Do you know what they're trying to demonstrate?

A. The effectiveness of the program on a variety of levels. Way beyond the advertising

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/phhd0001

campaign.
Q. Have you been interviewed or discussed the program with the UC San Diego investigators?
A. No.
Q. Have they contacted anybody in your organization?
A. No. I mean, have they contacted any of us ever? Yes. For their report? No.
Q. Okay. So you've not had separate or independent discussions about their report?

119

A. No.
Q. Have you seen any drafts of it at all?
A. Yes.
Q. Do you have an independent understanding as to what conclusions --
A. No.
Q. -- the investigators have reached?
A. No.
Q. Can you tell me what your recollection is of the report that you saw?
A. It's a very thick report covering almost every topic of the antismoking movement. So I don't have a -- I would need to refresh my memory. Haven't looked at it in a couple of years.
Q. Okay. Do we have a copy of that report --
A. You should.
Q. -- in your file materials? All right. Now, let me just make sure that we're both barking up the same tree.
Are you not thinking of the Wave 1 report?
A. Right.
Q. You're thinking of an entirely separate report that's been done by the University of California at San Diego?
A. Yes.

120

Q. When Asher began to craft ETS ads commencing in 1994, was consideration given as to the preferable types of media that they wanted these ads to be carried by?
In other words, is TV preferable to printed ads? Is radio preferable to TV?
A. We didn't ever say or believe that TV was preferable for secondhand smoke ads

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

specifically. TV's
preferable for reaching our target audience in general.
So we choose TV for our campaign in general.
Q. And the reasons --
A. As the primary media.
Q. Why is it selected as the primary media?
A. Because of its intrusiveness. Because it's a visual medium. Because it reaches a lot of people, although there are groups of people it doesn't reach, so it has its weaknesses.
Q. And can you tell me, in general, your understanding of what people it doesn't reach?
A. I don't believe that television does a good job of reaching a -- very, very upscale adults. I think there are better mediums for reaching them. It doesn't do a good job of reaching new immigrants to this country. We're not doing any teen media effort right now, so we're not reaching teens very well. Those would be some examples.

121

Q. All right. By way of priorities, if television is the preferred medium, is radio second?
A. Radio and outdoor are both second.
Q. Okay. Are there groups that you believe, as in television, that radio and outdoor don't reach?
A. Outdoor reaches most people. Radio, all I know is that the top level of reach for radio is about 62 percent of the population. So based on knowing that, I would know that, you know, 40 percent of the people aren't reached by radio.
Q. What's the top level of reach by television in the --
A. 95 percent.
Q. Are the groups that you don't feel are reached by TV, do they comprise the other 5 percent? In other words, the upscale --
A. No. Well --
Q. -- adults, new immigrants and the teen media?
A. Not really. Those things don't really make sense together.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

Q. Okay. All right.
Is there some approximation in your mind by terms of percentages how large the groups are that comprise upscale adults, or new immigrants or teen media that are not reached by TV ads concerning antismoking?

122

A. I don't know that information.
Q. When you are crafting an antismoking campaign -- and let's assume for a minute it deals with ETS -- you talked about this a little bit earlier in the depo, if there are specific events in a particular region, for instance, the Rose Bowl in Pasadena, the San Francisco 49ers actually winning a football game, do you try and tie your media buys in conjunction with those events, hoping to maximize your audience?
A. No.
Q. All right. Are there any sporting, fashion, any type of -- of events that influence how you place your media buys for your antismoking campaign under Prop 99?
A. Like I mentioned earlier, Western chooses shows based on the percentage of the target audience they reach and how cost effective they are, so there's also a mix of shows that -- high profile shows that reach a lot of our target combined with shows that don't reach as many of our target but are more affordable.
Q. Affordable. Okay.
When you are crafting your ads under Prop 99, is it your custom to warn about general health effects, or do you try and warn about specific health effects in the ads, or is it a combination of both?

123

A. Could you be more specific?
Q. Yeah. I would look at an ad that says smoking kills, ETS kills as an example of a general health effect. I would look at an ad that talks about -- that references the danger of sudden infant death

http://legacy.library.ucsf.edu/tid/hin05a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/phhd0001

syndrome,
asthma, resulting from exposure to ETS as an example of
a specific health effect.
So with that definition, when you sit down to
create your strategy and craft your ads, what are the
factors that you consider as to whether you make a
general health effect warning as opposed to a specific
health effect warning?
A. It depends on the point in time we're at with
the campaign.
Q. Now, what do you mean by that?
A. At the beginning of the campaign or near the
beginning, the '92, '93, '94 period, most people aren't
aware of the dangers of secondhand smoke or that it's
dangerous at all, you would go with a more general
message, just simply to communicate that secondhand
smoke kills.
Q. Okay.
A. As time evolves, you would believe, because
your campaign has been running, that people are aware of
that now. And then you would move to more specific

pieces of information. New things that have been
associated with secondhand smoke.
Q. So there's a continuum, if you will, based on
the audience's sophistication with the issue?
A. Yes.

http://legacy.library.ucsf.edu/tid/hin05a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/phhd0001